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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/768,432  
Filing Date: January 30, 2004  
Appellant(s): HUNLETH ET AL.

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Hunleth et al.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 4/15/2009 appealing from the Office action mailed 8/14/2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

However, Appellant's brief presents arguments relating to prematurity of a final rejection. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2004/0123320	Daily et al.	06-2004
7,093,201	Duarte, Matias	08-2006
6,154,199	Butler, Craig L.	11-2000
2004/0221243	Twerdahl et al.	11-2004

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 4, 5, 10, 13-21, 23-27, 29, 30, 32, 33 and 47-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daily et al. (hereinafter "Daily"), U.S. Publication Application No. 2004/0123320 A1, in view of Duarte, U.S. Patent No. 7,093,201 B2 in further view of Twerdahl et al. (hereinafter "Twerdahl"), U.S. Publication Application No. 2004/0221243 A1, which claims priority to provisional application No. 60/467,164, filed on Apr. 30, 2003 of record.**

Claim 1:

Daily's Figure 1A illustrates a control framework for organizing for organizing, selecting and launching means for organizing said media items which

**are represented by corresponding images at a current semantic level** (see par. 39, Figure 1A).

Daily teaches **means for pointing to one of said media items represented by a first image** (see par. 48).

Daily teaches **wherein said means for pointing to one of said media items includes a three dimensional (3D) pointer which generates a cursor on a display screen, a position of said cursor being based on movement of said 3D pointer** (see par. 48, par. 59). Examiner interprets the gesture devices to anticipate 3D pointers because the bodily gesture movement used to point the input device encompasses three or more dimensions in air in front of the television display screen (see par. 48). The preliminary selection being performed by moving a cursor over a particular icon by a gesture device is interpreted to anticipate a cursor on a display screen, a position of said cursor being based on movement of said 3D pointer because the gesture device can control a cursor over a particular icon to make a preliminary selection (see par. 59).

Daily teaches **means for selecting said first image for display at a different semantic level;** (see par. 40-42, par. 48). Examiner interprets the wireless remote controls as the means for selecting one of a plurality of different semantic levels associated with the media sources (i.e., images).

Daily fails to expressly teach a means for transitioning as recited in claim 1.

However, Duarte teaches **means for transitioning from (a) the current semantic level at which said first image is displayed to (b) said different semantic**

**level by simultaneously changing a size of said first image and translating said first image from a first location at said current semantic level to a second location at said different semantic level** (see col. 8 lines 24-45, Figure 11). Examiner interprets the highlighting of the media icons to make the media icons stand out from other media icons not selected to be an example of changing a size as illustrated in Figure 11.

Duarte fails to expressly teach means for transitioning from the current semantic level, at which said first image is displayed together **with other images of said media items**, to (b) said different semantic level, **at which said first image is displayed without said other images of said media items**.(emphasis added)

However, Twerdahl teaches means for transitioning from (a) the current semantic level, at which said first image is displayed together **with other images of said media items**, to (b) said different semantic level, **at which said first image is displayed without said other images of said media items** (see abstract, par. 19-20, Figures 2 and 3).

Examiner interprets Twerdahl's Figures 2 and 3 to illustrate transitioning from the current semantic level (e.g. Figure 2) to said different semantic level (e.g. Figure 3), in which a selected menu item (i.e. said first image) is displayed together with other menu items, at which the one selected menu item from Figure 2 is displayed **without the other menu items from the current semantic level** as shown in Figure 3.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the interactive guide providing optional support for a

preliminary selection as taught by Daily with the curved-listing file ("media") hierarchy/preview area capable of transitioning to different semantic level while simultaneously changing the size of images representing media items as taught by Duarte and to modify the transitioning as taught by Daily in view of Duarte with the transitioning technique of the radial menu as taught by Twerdahl to provide the benefit of viewing more information based on the curved hierarchy structure (see Daurte; col. 8 lines 39-42) and providing a compact menu format optimized for electronic devices with smaller screens (see Twerdahl; par. 8-9). **(claim 1; i.e., means for transitioning from (a) the current semantic level, at which said first image is displayed together with other images of said media items, to (b) said different semantic level, at which said first image is displayed without said other images of said media items, by simultaneously changing a size of said first image and translating said first image from a first location at said current semantic level to a second location at said different semantic level.)**

Claim 4:

Daily teaches *"gesture recognition devices for recognizing input from a user in the form of a bodily movement, and microphones coupled with voice recognition processors"* (see par. 48). **(claim 4; i.e., wherein said means for pointing to one of said media item includes a voice recognition unit.)**

Claim 5:

Daily teaches *"gesture recognition devices for recognizing input from a user in the form of a bodily movement, and microphones coupled with voice recognition processors"* (see par. 48). **(claim 5; i.e., wherein said means for pointing to one of said media items includes a gesture recognition unit.)**

Claim 10:

Daily's Figure 1A illustrates **a control framework comprising: a display screen for displaying graphical user interface objects at a current semantic level** (see par. 39, Figure 1A).

Daily teaches **an input device for providing user input to a graphical user interface, wherein said input device includes a 3D pointer which generates a cursor on said display screen, a position of said cursor being based on movement of said 3D pointer** (see par. 48, par. 59).

Daily teaches **said graphical user interface for coordinating display of said graphical user interface objects on said display screen, said graphical user interface including: means for detecting when a position indicated on the screen by said input device is stationary for a predetermined period of time and to display additional images and/or text on the screen in response thereto** (see par. 59, Figure 1A).

Daily teaches **a means for detecting (par. 50, par. 59), a means for zooming (par. 54-55), a means for selecting (par. 57), a means for moving a selection target**



**(par. 56), and a means for initiating an action (par. 59) as cited in the limitations of claim 10. (claim 10; i.e., means for zooming from one image scope corresponding to one of said graphical user interface objects to another image scope based on first input from said input device; means for selecting said one of said graphical user interface objects based on second input from said input device; means for moving a selection target through a list of screen positions based on third input from said input device; means for initiating an action in said graphical user interface framework based on said indicated position and fourth input from said input device)**

Daily fails to expressly teach a means for transitioning as recited in claim 10.

The means for transitioning limitations as recited in claim 10 are substantially encompassed in the means for transitioning limitations as recited in claim 1. Therefore, Examiner rejects the means for transitioning limitations as recited in claim 10 under the same rationale given for claim 1 above.

Claim 13:

Daily teaches *"a touchpad 408 that allows a user to control"* (see par. 49).  
**(claim 13; i.e., wherein the input device includes a touchpad).**

Claim 14:

Daily teaches *"a television remote control 410"* (see par. 14).

**(claim 14; i.e., wherein the input device includes a television remote control device).**

Claim 15:

Daily teaches *"gesture may be used to perform the pre-selection"* (see par. 59).  
**(claim 15; i.e., wherein at least one of said first, second, third and forth inputs is a gesture)**

Claim 16:

Daily teaches *"gesture recognition devices for recognizing input from a user in the form of a bodily movement, and microphones coupled with voice recognition processors"* (see par. 48). **(claim 16; i.e., wherein at least one of said first, second, third and forth inputs is a voice input)**

Claim 17:

Daily teaches *"touch pad, the user may control the level of zooming by moving their fingers across the touch pad"* (see par. 54). **(claim 17; i.e., wherein the means for moving a selection target includes a touchpad and said third input is a movement on said touchpad.)** Examiner interprets the touchpad to be capable of selecting a target (see par. 57).

Claim 18:

Daily teaches *"Preliminary selection can provide a user with a preview of the media content, and can be performed, for example, by moving a cursor over a particular icon or by an explicit pre-selection command, for example, a specific button, vocal command, or gesture may be used to perform the pre-selection"* (see par. 59). **(claim 18; i.e., wherein said means for displaying additional images and/or text further comprises means for receiving a gesture input associated with a hover function.)**

Examiner interprets moving a cursor over a particular icon as the hover function.

Claim 19:

Daily teaches *"The speech recognition component can use standard speech recognition technologies to incorporate a dynamic, customizable language and grammar to allow a user to provide spoken commands to the interactive guide. Preferably, simple and easy-to-use phrases such as "go back", "pick", "zoom view", "pan screen" may be used"* (see par. 42). **(claim 19; i.e., wherein said first input of said means for zooming is one of a gesture or a speech command.)** Examiner interprets the phrase "zoom view" to be a speech input command.

Claim 20:

Daily teaches *"a television to generate the display"* (see par. 49). **(claim 20; i.e., wherein the display screen is a television.)**

Claim 21:

Daily's Figure 4 illustrates **a media system comprising: a television having a display screen** (see Figure 4).

Daily teaches **a 3D pointing device for providing input to said television, said input based, at least in part, on movement of said 3D pointing device which generates a cursor on said display screen, a position of said cursor being based on said movement of said 3D pointing device** (see par. 48, par. 59).

Daily's Figures 3 and 4 illustrates **a system controller for receiving said input and controlling media content displayed on said display screen based on said input, wherein said system controller includes a memory for storing software code associated with primitives for controlling said media content display, and wherein: a first one of said primitives is a scroll primitive, such that said controller scrolls media content displayed on said display screen of said television responsive to a first input from said pointing device; and a second one of said primitives is a hover primitive, such that said system controller alters a display of said media content displayed on said display screen of said television when said cursor hovers over a portion of said display screen for a predetermined period of time** (see par. 59, Figures 3 and 4). Examiner interprets the television and mouse with a scroll wheel capable of performing the scroll primitive as cited in claim 21.

Daily fails to expressly teach a means for transitioning as recited in claim 21.

The means for transitioning limitations as recited in claim 21 are substantially encompassed in the means for transitioning limitations as recited in claim 1. Therefore, Examiner rejects the means for transitioning limitations as recited in claim 21 under the same rationale given for claim 1 above.

Claim 23:

Daily teaches *"The navigation interface supports various gesturing devices with many buttons (or none) including wireless or corded mice, wireless pointers, and other devices that otherwise simulate two or three button mice"* (see par. 42). **(claim 23; i.e., wherein said 3D pointing device has at least one button and wherein one of said primitives is a click primitive which indicates actuation of said at least one button.)** Examiner interprets the gesturing device as a 3D pointing device.

Claim 24:

Daily's Figure 4 illustrates a mouse with a scroll wheel (see Figure 4, ref. # 418.) **(claim 24; i.e., wherein said 3D pointing device includes a scroll wheel.)** Examiner considers mice with three buttons or two buttons with scroll wheel as 3D pointing devices.

Claims 25-27:

Daily teaches *"If a zoom-in command is received, the display is adjusted to show more detail 706"* (see par. 54). **(claim 25; i.e., wherein said system controller alters**

**said display of said media content by magnifying media content associated with said portion of said display screen.) (claim 26; i.e., wherein a third one of said primitives is a zoom primitive, such that said system controller changes a magnification of said media content displayed on said display screen of said television based on a second input from said 3D pointing device.) (claim 27; i.e., wherein said change in said magnification includes changing from a first magnification level to a second magnification level, wherein information is visible at said second magnification level that was not visible or appropriate at said first magnification level.)** Examiner interprets zooming in more detail as equivalent to magnifying detail on the second zoom level that wasn't visible on the first zoom level.

Claim 29:

Daily teaches *"touchpad-based remote control 406 which provides the user with a set of buttons as well as a touchpad 408"* (see par. 49). **(claim 29; i.e., wherein the 3D pointing device includes a touchpad.)** Examiner interprets the touchpad-based remote control as anticipating the 3D point device including a touch pad because the gesturing device contains buttons to serve as a remote control. Therefore, the touchpad-based remote control would clearly anticipate including a touchpad to the gesturing device ("3D point device") remote control as recited in claim 29.

Claim 30:

Daily teaches "*Navigation control may be provided by several possible means, preferably through the use of a traditional remote control. The user may use various combinations of buttons and gestures or spoken language to signify a desired command, depending on the device used for user input. The navigation interface supports various gesturing devices with many buttons (or none) including wireless or corded mice, wireless pointers*" (see par. 42). **(claim 30; i.e., wherein the 3D pointing device includes a television remote control device.)** Examiner interprets the gesturing devices ("3D pointing device") as capable of being used as a traditional remote control because the gesturing devices contain buttons for signifying commands to the television.

Claim 32:

Daily teaches "*The speech recognition component can use standard speech recognition technologies to incorporate a dynamic, customizable language and grammar to allow a user to provide spoken commands to the interactive guide. Preferably, simple and easy-to-use phrases such as "go back", "pick", "zoom view", "pan screen" may be used*" (see par. 42). **(claim 32; i.e., wherein at least one of said scroll primitive and said hover primitive are actuated in response to a speech command.)** Examiner interprets the phrase "pan screen" as a speech command to actuate the scroll primitive.

Claim 33:

Daily teaches *"By allowing the use of pointing and speaking, a user could, for example, simply move the cursor over media and say, "play this" or "take me there" (see par. 43). (claim 33; i.e., wherein at least one of said scroll primitive and said hover primitive are actuated in response to a gesture)* Examiner interprets the user moving the cursor over the media as a gesture that actuate the hover primitive.

Claim 47:

Daily fails to expressly teach wherein said first location of said respective one of said different images is different relative to said displaying screen from said displaying screen from said second location.

However, Duarte teaches **wherein said first location of said first image is different relative to said displaying screen from said displaying screen from said second location** (see col. 8 lines 24-45, Figure 11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the interactive guide providing optional support for a preliminary selection as taught by Daily with the curved-listing file ("media") hierarchy/preview area capable of performing the limitations of claim 47 as taught by Duarte to provide the benefit of viewing more information based on the curved hierarchy structure (see Daurte col. 8 lines 39-42).

Claim 48:



Daily fails to expressly teach wherein said means for transitioning is configured to display said respective one of said different images while being translated and changed in size.

However, Duarte teaches **wherein said means for transitioning is configured to display said first image while being translated and changed in size** (see col. 8 lines 24-45, Figure 11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the interactive guide providing optional support for a preliminary selection as taught by Daily with the curved-listing file ("media") hierarchy/preview area capable of performing the limitations of claim 48 as taught by Duarte to provide the benefit of viewing more information based on the curved hierarchy structure (see Daurte col. 8 lines 39-42).

Claims 49 and 50:

Claims 49 and 50 are substantially encompassed in claims 47 and 48 respectively; therefore claims 49 and 50 are rejected under the same rationale as claims 47 and 48 above.

Claims 51 and 52:

Claims 51 and 52 are substantially encompassed in claims 47 and 48 respectively; therefore claims 51 and 52 are rejected under the same rationale as claims 47 and 48 above.

Claims 53 and 54:

Claims 53 and 54 are substantially encompassed in claim 1; therefore claims 53 and 54 are rejected under the same rationale as claim 1 above.

**Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daily in view of Duarte, in further view of Twerdahl as cited above, in further view of Butler, U.S. Patent No. 6,154,199.**

Claim 28:

Daily, Duarte, and Twerdahl fail to expressly teach a 3D pointing device including a trackball.

However, Butler teaches *"a hand positioned mouse and more particularly to a glove like article having a tracking ball positioned to be operated by the thumb with switch functions or buttons positioned on the palm of the hand"* (see col. 2 lines 31-35). **(claim 28; i.e., wherein the 3D pointing device includes a trackball.)** Examiner interprets the hand positioned mouse as a 3D pointing device because the movement of the hand in three or more dimensions can be translated to control a cursor (Butler; col. 1 lines 42-50).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the gesture device ("3D pointing device") as taught by Daily to include a track ball as taught by Butler to provide the benefit of saving

time and producing efficient means of simultaneous cursor control and typing (see Butler; col. 1 lines 42-50).

**(10) Response to Argument**

**I. Rejection of Claims 1, 4, 5, 10, 13-21, 23-27, 29, 30, 32, 33 and 47-54 as unpatentable over Daily, Duarte and Twerdahl is improper**

**IA. Finality of the last Office Action Is Improper**

In this section of the Appeal Brief, it appears that Appellant is only arguing that the finality of Office Action dated 8/14/2008 is improper (see Brief; page 12).

Although, Examiner respectfully disagrees; Examiner will not address Appellant argument because the issue of prematureness of a final Office action relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

**IB. Rejection of Claims 1, 4, 5, 10, 13-21, 23-27, 29, 30, 32, 33 and 47-54**  
**under the combination of Daily, Duarte and Twerdahl is improper**  
**a. Duarte does not teach or suggest current and different levels**

Appellant argues that the disclosure of Duarte fails to teach or suggest *“translating said first image from a first location at said current semantic level to a second location at said different semantic level,”* as recited by claim 53 (see Brief; page 14).

Examiner respectfully disagrees.

In respect to Duarte's Figure 11, Examiner interprets the highlighted icon(e.g. ref. 101) and corresponding preview area (e.g. ref . 103) to represent a semantic level. When an icon within the loop is changed to a location within the highlighted region, the semantic level changes via a new highlighted icon displayed with corresponding preview area. In other words, each highlighted icon and corresponding preview area represent a semantic level when displayed together. Appellant admits that Duarte teaches icons within the loop are moving through the highlighted region (i.e., changing locations) (see Brief page 6, 2<sup>nd</sup> full paragraph). Therefore, the icons change locations when translating from one semantic level (i.e., displaying icon and preview area) to a different semantic level (i.e., displaying the next icon and corresponding preview area).

Thus, Duarte does teach or suggest changing a location of the image (e.g. icon) when translating from one semantic level to a different semantic level.

Appellant submits that the interpretation of the claimed **"semantic zooming"** is inaccurate (see Brief; page 14).

Examiner notes that the phrase **"semantic zooming"** is not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

At best, it appears that the Appellant is arguing that the "means for" language recited in the independent claims is being invoked to include the **"semantic zooming"** that is described in paragraph 65 of the present application. For example, in claim 1, means for transitioning and in claim 10, means for zooming, are intended to include the **"semantic zooming"** in the present application. Examiner submits that the "means for" examples in claims 1 and 10 are not necessarily referring to the described **"semantic zooming"** in the present application. For example, paragraph 24, describes a virtual camera as a means for zooming; paragraph 34, describes a zoomable graphical interface as a means for zooming; paragraph 36, describes a selection button as a means for zooming. Although, "semantic zooming" is not explicitly recited in the claims;

even if the Appellant was attempting to include "semantic zooming" via "means for" language, Examiner is not limited to interpreting "semantic zooming" as the only means for performing the functions (i.e., means for transitioning or means for zooming) recited in claims 1 and 10.

Appellants respectfully submit that a person of ordinary skill in the art would not consider Figure 11 and corresponding disclosure in Duarte as showing plural semantic zooming as suggested by the Examiner. Therefore, Daily and Duarte fails to teach or suggest transitioning from a current semantic level to a different semantic level as recited by the claims (see Brief; page 15)

Examiner respectfully disagrees.

As noted above, Examiner submits that "***semantic zooming***" is not recited in the claims. Also, as explained above, in respect to Duarte's Figure 11, the icons change locations when translating from one semantic level (i.e., displaying icon and preview area) to a different semantic level (i.e., displaying the next icon and corresponding preview area). Therefore, Duarte does teach or suggest transitioning from one semantic level to a different semantic level.

Appellant submits the Final Office Action on page 4, second paragraph, recognized that Duarte fails to display the first image, at the different semantic level, without other images that were displayed with the first image at current semantic level.

Examiner notes that the limitation "display the first image, at the different semantic level, **without other images that were displayed with the first image at current semantic level**" is narrower in scope than merely transitioning from one semantic level to a different semantic level as taught by Daurte. Therefore, Examiner relies on Twerdahl to teach "display the first image, at the different semantic level, **without other images that were displayed with the first image at current semantic level**" (see Twerdahl; abstract, par. 19-20, Figures 2 and 3)

Examiner interprets Twerdahl's Figures 2 and 3 to illustrate transitioning from the current semantic level (e.g. Figure 2) to said different semantic level (e.g. Figure 3), in which a selected menu item (i.e. said first image) is displayed together with other menu items, at which the one selected menu item from Figure 2 is displayed **without the other menu items from the current semantic level** as shown in Figure 3.

**b. Twerdahl does not teach or suggest displaying a same image at current and different semantic levels**

Appellant argues that Daily, Duarte, and Twerdahl fail to teach or suggest displaying a same image at the current semantic zooming and at a different semantic zooming as recited by the independent claims (see Brief; page 17).

Examiner respectfully disagrees.

Twerdahl explicitly "**A second central object 318 can be the same as the first central object 218**, or different as shown" (see par. 20). Although, the example in the figures illustrates the selected central objects to be different from one semantic level (i.e., Figure 2) to a different semantic level (i.e., Figure 3), Twerdahl discloses another embodiment in which the selected central objects are the same (i.e., same image) from one semantic level to the different semantic level without the other media items originally displayed at the first semantic level. Therefore, Twerdahl does teach or suggest a **means for transitioning from (a) the current semantic level, at which said first image is displayed together with other images of said media items, to (b) said different semantic level, at which said first image is displayed without said other images of said media items, by simultaneously changing a size of said**



**first image and translating said first image from a first location at said current semantic level to a second location at said different semantic level.**

Examiner further notes that U.S. Pub. No. 2004/0221243 (i.e., Twerdahl et al.) is relied upon to form the basis of the prior art rejections, not the Provisional application. The Provisional Application is relied upon to establish an effective date for the U.S. Pub. No. 2004/0221243. Therefore, U.S. Pub. 2004/0221243 has an effective filing date which is the same as the filing date of the provisional application and qualifies as prior art in accordance with 35 U.S.C. 102(e).

**II. Rejection of Claim 28 under the combination of Daily, Duarte, Twerdahl and Butler**

Appellants respectfully submit that the rejection of dependent Claim 28 is improper for the reasons discussed above with regard to independent claim 53 (see Brief; paragraph 53).

In response, Examiner relies on rationale set forth above with regard to claim 53 to address the issues of claim 28.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Henry Orr/

6/8/2009

Conferees:

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